

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at WINCHESTER

LESLIE DRAKE,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

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Case No. 4:08-cv-52

Judge Mattice

MEMORANDUM AND ORDER

I. Procedural Background

Plaintiff filed the Complaint for the instant case on July 25, 2008. [Court Doc. 1, Compl.] In accordance with Rule 4, the Court ordered Plaintiff to show cause on or before August 17, 2009 as to why Plaintiff's Complaint should not be dismissed pursuant to Rule 4(m). [Court Doc. 2, Show Cause Order]. Plaintiff did not file a timely response to the Court's show cause order.

II. Analysis

Federal Rule of Civil Procedure 4(m) provides, in pertinent part, as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Thus, pursuant to Rule 4(m), if a plaintiff has not timely served a defendant and shows good cause for such failure, the Court must extend the time for service. If, however, no good cause for such failure is shown, Rule 4(m) permits the Court to choose, in its

discretion, either to dismiss the action without prejudice as to that defendant or to direct that service be effected within a specified time.

In this case, there is no evidence in the record that Plaintiff has served the Complaint and Summons on Defendant. Further, Plaintiff failed to respond to the Court's show cause order and, therefore, has not provided good cause for the failure to timely serve Defendant. As a result, pursuant to Rule 4(m), the Court is within its power to dismiss without prejudice Plaintiff's action.

III. Conclusion

Accordingly, for the reasons explained above, it is **ORDERED** that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m). The Clerk is directed to close the file in this case.

SO ORDERED this 28th day of August, 2009.

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE